

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

T. J. ROBINSON III,

Defendant-Appellant.

UNPUBLISHED

March 10, 2005

No. 251810

Midland Circuit Court

LC No. 03-001418-FH

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of fourth-degree fleeing and eluding, MCL 257.602a(2), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant failed to stop his motorcycle when Gratiot County deputies attempted to stop him for speeding. Instead, defendant increased his speed, initiating a police pursuit. Defendant made numerous turns during the pursuit, which at times reached speeds in excess of 100 miles per hour. Midland County deputies continued to pursue defendant after he crossed into that county. That pursuit reached speeds in excess of 120 miles per hour. Defendant stopped in the City of Midland when he encountered a police roadblock.

Defendant, a corrections officer, testified that he had been pulled over numerous times by various police agencies in Gratiot County, and that on one occasion an officer threatened him. He contended that he did not stop his motorcycle because he was frightened due to his past encounters with police in that county. Defendant maintained that he became lost, and that he stopped in Midland because he knew he was no longer in Gratiot County.

Defendant moved for judgment notwithstanding the verdict¹ or, in the alternative, a new trial, arguing that the verdict was against the great weight of the evidence because the prosecution failed to prove beyond a reasonable doubt that he had not acted under duress when he fled from the police. The trial court denied the motion.

¹ Defendant cited MCR 6.419(B), the court rule pertaining to a motion for a directed verdict of acquittal.

Defendant argues that the trial court's denial of his motions constituted error. We disagree.

When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. [*People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).]

A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). "[A] trial court may grant a motion for a new trial based on the great weight of the evidence only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). If the evidence conflicts, the issue of credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). We review for abuse of discretion a trial court's decision on a motion for new trial. *People v Jones*, 236 Mich App 396, 404; 600 NW2d 652 (1999).

The defense of duress is successfully raised where a defendant presents evidence from which a jury could conclude: (1) there was threatening conduct sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm, (2) the conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant, (3) the fear or duress was operating upon the mind of the defendant at the time of the alleged act, and (4) the defendant committed the act to avoid the threatened harm. [*People v Terry*, 224 Mich App 447, 453; 569 NW2d 641 (1997).]

Once the defendant successfully raises the defense of duress, the burden shifts to the prosecution to prove beyond a reasonable doubt that the defendant did not act under duress. *Id.* at 453-454.

Defendant based his duress claim on his testimony that he had run-ins with Gratiot County police officers and one officer had threatened to harm him. Defendant could not recall the agency for which the threatening officer worked. He acknowledged both that he did not know what agency the Gratiot County officers were in and that he could have been speeding when they activated their lights and sirens. Under these circumstances, the jury was entitled to reject defendant's assertion that he fled because he feared immediate harm. *Lemmon, supra*. Furthermore, evidence that defendant continued to flee at speeds exceeding 120 miles per hour after he crossed into Midland County was more than enough evidence to persuade the jury beyond a reasonable doubt that defendant was not acting under duress at all, but trying to evade arrest. Because the verdict was not against the great weight of the evidence, the trial court correctly denied defendant's motions.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell